IN THE COURT OF JUDICATURE AT BOMBAY

ORIGINAL SIDE JURISDICTION

WRIT PETITION NO. 349 OF 2001

Central Bank of India . ...Petitioners

vs.

Mr.R.G.Vanmali and anr. ...Respondents

Ms.S.V.Kher i/by.K.P.Anilkumar for the petitioners.

Mr.V.P.Vaidya for respondent no.1.

CORAM: S.C. DHARMADHIKARI, J.

29th January, 2007.

P.C :-

1. By this petition under Article 226 of the Constitution of India, the petitioner Union Bank of India challenges the Awards dated 3.3.1999 and

10.2.2000 (Exhibits I and J to this Writ Petition).

2. By the award which is referred as Part-I the Learned Presiding Officer of the Central Government Industrial Tribunal came to the conclusion that the domestic inquiry which was held against the respondent by the petitioner was in accordance with the principles of natural justice but the Enquiry Officer's findings are perverse. The petitioner management was therefore allowed to lead evidence to justify its actions.

3. By the award which is referred as Part-II Exhibit J delivered on 10.2.2000, the Learned Presiding Officer concluded that the action of the management in dismissing the respondent with effect from 13.9.1995 is not legal and justified. The petitioner was directed to reinstate the Respondent in its service with continuity so also pay him full Backwages, Save and except deducting a sum of Rs.3,000/- per month from the said quantum from 1.6.1996 till payment.

4. It is not in dispute that the respondent is an employee of the petitioner. He was at the relevant time posted by the petitioner bank at its branch in Mumbai. He joined the service of the bank as a clerk with effect from 10th April, 1981. He worked in various departments. The petitioner alleged that while working at Bhuleshwar branch, the respondent was issued with certain memos dated 13.3.1993 and 16.4.1993 for certain acts of misconduct conducted during his tenure at the said branch. By these memos he was placed under suspension. He submitted his written explanation thereof which was found to be unsatisfactory. A decision was therefore taken to institute a disciplinary/departmental inquiry against him. A chargesheet dated 2.7. 1993 was issued in that behalf.

5. The charges are that although, the respondent was a clerk in the Savings Bank department of Bhuleshwar Branch he introduced a Current Account of a partnership firm. The Current Account was of one Shreeji Jewellers. The introduction to this Current Account by the respondent was against the banking

norms. The banking norms are that, one Current Account can be opened by a firm, if only, the same is introduced by another Current Account holder.

6. It is then alleged that between 27.3.1991 to 6.6.1991 the respondent though not connected with the Current Account Department of Bhuleshwar branch, filled in 37 pay-in-slips in his own hand writing crediting various amounts in the Current Account No.109188 of the said M/s. Shreeji Jewellers. It is alleged that two cheques of Rs.9 lacs drawn on Dena Bank, Bhuleswhar branch and lodged in the said Current account for clearing were returned unpaid by Dena Bank on 21.6.1991. The particulars of these cheques were filled in by the respondent in the said pay-in-slips.

7. It is lastly alleged that the respondent while working in Saving Department at Bhuleshwar branch during the aforesaid period colluded with one Saujiani and Anwar Qureshi. He got issued Four Fate letters with regard to certain cheques drawn by M/s. Shreeji Jewellers. It is alleged that the contents

of these letters are in the handwriting of the respondent. It is alleged that the respondent was working in the Saving Department at the branch. He has no connection with the Current Account department at the said branch. Thus, there was no occasion for him to prepare the said letters.

8. After setting out the details pertaining to the said Fate letters, the chargesheet alleges that the respondent in collusion with the above officers misled the collecting bankers thereby showing undue favour to M/s.Shreeji Jewellers. Thus, when the balance in the Account of M/s. Shreeji Jewellers was insufficient to meet the amount that would be required to be paid under the cheques covered by the aforesaid Letters, an assurance was given by the petitioner to the Third Party/Collecting Bank that the cheques would be duly honoured. It is therefore alleged that the respondent aided and abeted M/s. Shreeji Jewellers in committing a fraud and for all these actions he received illegal gratification of Rs.1000/-.

9. It was alleged that these acts of the respondent amount to Misconduct within the meaning of para 19.5 (Clause J) of the Bi-partite Settlement dated 19.8.1966 one N.K. Shriyan was appointed as the Enquiry Officer.

10. A chargesheet was issued and duly served. An opportunity was given to the respondent by the petitioner to deal with the allegations and considering the fact that the written statement/reply to the chargesheet was of denial it was decided that an Disciplinary Enquiry be held. Accordingly the Enquiry commenced. At the inquiry which was held by the petitioner bank, the bank examined two witnesses of the branch and produced several documents. The chart which is annexed to the petition at Exhibit B enlists the gists of the charges, evidence led by the petitioner and that of the respondent so also the findings of the Enquiry Officer on each of the charges.

11. The Inquiry Officer at the conclusion of the Inquiry submitted his report.

12. As per the rules, a show cause notice was issued by the disciplinary authority before passing final orders. By this notice comments and remarks of the respondent were called for and a reply was forwarded by the respondent on 22.7.1995. With regard to the proposed punishment also identical procedure was followed and infact a personal hearing was also given by the Disciplinary Authority.

13. The Disciplinary Authority in its final order concluded that Charge No.1 is not proved and therefore exonerated the respondent.

14. As far as Charge No.2 and 3 are concerned, it was held that they are proved and considering the seriousness of the same, the punishment of Dismissal was awarded by the Disciplinary Authority vide final order dated 13.9.1995. The Disciplinary Authority’s order has been confirned in Appeal. The Appellate Authority rejected the First Respondent’s Appeal.

15. It appears that aggrieved and dissatisfied by

the punishment of dismissal from services imposed upon the respondent, his case was taken by the Central Government Employees Association. It moved the Central Government requesting that a Reference of the dispute between the parties be made and that is how the Central Government in exercise of the powers conferred by Clause (d) of Sub-Section (1) of Section 10 of the Industrial Disputes Act, 1947 referred for adjudication the demand of the union for reinstatement of the respondent in the services of the petitioner. The Reference was made to the Central Government Industrial Tribunal at Mumbai.

16. A statement of claim was filed pursuant to the directions issued by the Presiding Officer and the demand therein was that the respondent be reinstated because according to the union the case is based on the admission of the respondent employee that he has introduced the Account holder to the Bank, filled in the pay-in-slips (thirty seven in number) and wrote four Fate letters under the instructions of the authorised officer one Mr. Saujiani. It is contended in justification of this demand that the

petitioner bank did not examine any witness to establish that the respondent had opened the above Accounts with an intention to benefit M/s. Shreeji Jewellers or for the benefit of himself. It was contended that the evidence was withheld by the petitioner and therefore fair opportunity to rebut the alleged charges levelled was not given. In this behalf para 6 of the Statement of Claim which sets out the Justification in support of the Demand and more particularly subparas (i) and (ii) are relevant.

17. It is in these circumstances that the respondent prayed that the Tribunal should hold and declare that domestic inquiry is not legal, fair and proper and the same violates the principles of natural justice. A relief was claimed that the Tribunal should declare that the findings of the Inquiry Officer so also the reasons recorded by the disciplinary and appellate authority are perverse and bad in law. After holding so, the tribunal was requested to declare that the order of dismissal is vitiated and should therefore be set aside with consequential relief of reinstatement to the original

post.

18. The petitioner filed its written statement and after referring to the charges so also the proceedings before the Inquiry Officer, it denied the allegations in the Statement of Claim and contended that neither is the domestic inquiry vitiated nor are the findings perverse as alleged. They pointed out that the respondent is guilty in as much as he has violated Banking norms so also his conduct is such as can be termed as prejudicial to the interest of the bank. For all these reasons the petitioner prayed that the Reference be rejected. A rejoinder was filed by the respondent.

19. The Learned Presiding Officer thereafter made this Award, Part (I) on 3.3.1999. The Learned Presiding Officer in para 17 and 18 went into the merits of the charge and the scope of the relevant clause in the bi-partite settlement and, ultimately, in para 19 held thus :

> " It appears to me that he had given these findings only on the basis of the factual position which is not in dispute."

20. The conclusion of the Learned Presiding Officer at the stage of Part-I Award was that the domestic inquiry was held in accordance with the principles of justice but the Inquiry Officer's findings are perverse. The management was allowed to lead evidence to justify its action.

21. Thereafter, the petitioner filed an Affidavit-in-lieu of examination-in-chief of its Assistant Manager, who, at the relevant time was posted at the Bhuleshwar branch. In his deposition the Assistant Manager pointed out that in the Savings Account and Current Account Department there is a practice of issuing Fate letters confirming the payment of a particular cheque through clearing by the Paying bank to the Collecting bank on request of the Collecting Bank. He said that such Fate letters are issued after confirming the payment of the cheque in question in that particular account so also on ascertaining that the cheque in question is debited to the parties account. He relied upon the copies of the Fate letters and stated that there was no

sufficient balance to clear the cheques in the Account of M/s.Shreeji Jewellers. The debit balance to the tune of Rs.10,22,450.50/- therefore resulted in the loss because of issuance of one of the Fate Letter. Similar is the position with regard to the other Fate letters. These statements were made by him after referring to the statement of Accounts for the concerned period. In his deposition he pointed out that the aforesaid Fate letters misled the Collecting bankers. The respondent displayed undue favours to M/s.Shreeji Jewellers knowing that the balance in their Account was insufficient to meet the demand 'Under' the cheques. It was his specific statement that when one of the Fate letters were written by the respondent he was not working in the Current Account department. Normally, such Fate letters are prepared and issued by the concerned departmental staff in the Current Department. The practice in the petitioner bank is that one employee working in a particular department can work or perform work in other department only after he is instructed by his superiors. He has also deposed that while preparing and issuing Fate letters the

concerned employee was ascertaining and verifying the position in the Account of the Current Account holder.

22. The cross examination of this witness proceeded upon the admitted facts and the questions posed were regarding signing of the Fate letters. The respondent did not step into the witness box nor did he lead any evidence.

23. The matter was thereafter placed for oral arguments with regard to the issue that was framed by the Learned Presiding Officer, namely, whether the action of the petitioner in dismissing the respondent employee is legal and justified.

24. The Tribunal after having held that the findings of the Enquiry Officer are perverse made the Part II Award holding that the action of dismissal is not legal and justified. He, thereafter, proceeded to set aside the dismissal order and directed that the reinstatement in the services should follow.

25. These awards are assailed by the petitioner bank by invoking this court's jurisdiction under Article 226 of the Constitution of India.

26. This writ petition was admitted and at the stage of admission this court granted interim orders in terms of prayer clause (c) subject to compliance of Section 17B of the I.D. Act. In other words, the implementation and execution of the impugned awards was stayed by this court.

27. At the hearing of this petition, Ms. Kher appearing for the petitioner has invited my attention to the charge, findings of the Inquiry Officer, the order of the disciplinary authority and the deposition of the respondent before the Presiding Officer. She thereafter took me through the Awards and contended that both Part I and Part II Award are vitiated. She submits that the factual aspects are not in dispute at all. The respondent employee does not dispute that at the relevant time he was working at the Bhuleshwar branch in the Savings Department. He does not dispute that the Current Account was

introduced by him. She submits that the bi-partite settlement is also undisputed in as much it is in force since 1966. She submits that even if the respondent employee is exonerated from Charge No.1 the conclusion drawn by the Inquiry authority which is confirmed by the Disciplinary and Appellate Authority with regard to Charges 2 and 3, cannot be held to be vitiated. She submits that once there is clear finding that the inquiry was fair and proper, then, considering the admitted factual position and the clause/para in the bi-partitite settlement, the ultimate action of dismissal cannot be held to be vitiated. She submits that the Tribunal in para 19 of the Award Part I, having clearly held that the Inquiry Officer arrived at his conclusion in the light of the factual position which is admitted by both sides, then, as to how his findings can be said to be perverse has not been clarified by the Tribunal at all. She emphasized the fact that the findings are based on admitted material. There is evidence before the Enquiry Officer in as much as relevant documents were produced and their contents proved. Considering the nature of charges and the reply to

the same, according to her, it can safely be said that the Inquiry Officer's findings are based on evidence. She submits that all facts being admitted and the Inquiry being fair so also no prejudice pointed out, then, merely because the Presiding Officer has some other view in mind he cannot term the findings of the Enquiry Officer as perverse.

28. She submits that the Part II award is also vitiated because the Learned Presiding Officer has gone into the aspect of adequacy of the punishment. She submits that once it is demonstrated that there is no perversity, then, the quantum of punishment is a matter which ought not to have been gone into. The question of reinstatement, in any event, does not arise. She submits that assuming without admitting that Part I and II Award require no interference, yet, this is a case where the petitioner has lost confidence in the employee. This is case of breach of trust and complete loss of faith in an Officer who has acted much beyond his authority. It is a serious misconduct on his part. In any event, the Tribunal was obliged to frame an Issue pertaining to

backwages. She submits that the law is that Reinstatement is not automatic. Assuming that reinstatement can be awarded it does not mean that full backwages should follow. In the absence of an issue being framed an adhoc finding that the respondent employee has been earning Rs.3000/- per month is something which would vitiate the final conclusion. She submits that this is not a matter where non-framing of issue of this nature is mere irregularity. This is case of gross irregularity and even on this ground the award should be interfered with and set aside.

29. Ms. Kher has relied upon the following decisions in support of her submission:-

1. Chairman and Managing Director, United Commercial bank and Ors. reported in 2003 1 CLR 796.

2. Damoh Panna Sagar Rural Regional Bank and Ors. vs. Munna Lal Singh reported in 2005 1 CLR 821.

3. Workmen of F.T.& R. Co.v. The Management

reported in 1973 LIC page 851.

4. Life Insurance Corporation of India vs. R.Dhandapani reported in 2006 1 CLR 32.

5. State Bank of India and anr. vs. Bela Bagchi and Ors. reported in 2005 III CLR 420.

6. State Bank of India and Ors. vs. T.J.Paul reported in 1999 II CLR 8.

7. The Cooper Engineering Ltd vs.P.P.Mundhe reported in AIR 1975 S.C.1900.

8. V.Ramana vs. A.P. State Road Transport Corporation and Ors. reported in 2005 III CLR 410

30. On the other hand, Mr. Vaidya appearing for the respondent supports the impugned Award. Inviting my attention to the Awards he submits that this court in exercise of its writ jurisdiction cannot interfere

with the same as if it is court of further appeal. He submits that the findings of the Presiding Officer with regard to perversity committed by the Inquiry Officer and his interference in the quantum of punishment are matters which are decided in the light of the materials produced before the Tribunal. Sufficiency or adequacy of the materials is not something which can be examined by this court in its writ jurisdiction.

31. That apart, according to him the respondent was recruited in the year 1981. Till date of the order of the dismissal he had rendered 13 years of unblemished service to the satisfaction of the petitioner. There is no other case or charge of misconduct. He submits that it is pertinent to note that the Inquiry Officer exonerates the respondent from the charge of accepting the bribe from the Current Account holder in return of the favours allegedly shown to it. Thus, there was no motive, ulterior or otherwise, in rendering the service to the Current Account holder. On the other hand, the Current Account Holder was invited to open an Account

with the Bank pursuant to a drive launched by the petitioner bank for deposits. It is not as if the respondent employee has gone out of the way and shown some special favour to the Current Account holder. All acts committed by him are part and parcel of the normal banking services. He submits that such acts must be demonstrated to have a co-relation to the prejudice or alleged loss caused to the bank. There is nothing to prove such co-relation. In other words, something more than merely assisting the customer must be brought on record. An Inocuous act of filling in the pay-in-slip and introduction of the Current Account Holder are normal courtesies shown by the bank to the customer. These are not acts of misconduct by themselves. Assuming that all factual aspects are admitted including the preparation and writing of Fate letters, Mr.Vaidya submits that the contents of the Fate letters being in the handwriting of the respondent employee is not enough. The allegation is that he prepared Fate letters. The signature and the despatch of the same are not matters which are within the Authority of the respondent. Mr.Saujaini was admittedly the superior

officer. He signed the same. By his signature and subsequent despatch of these letters that the bank was bound to honour the same. In short, the decision to address and Despatch such fate letters was not that of the Respondent but his superiors. Thus, Charge No.3 cannot be held to be proved by the limited role that is attributed to the respondent employee in the entire episode.

32. He submits that cheques being returned for want of insufficient funds are matters which cannot be attributed to an employee like Respondent. These are acts of an Account Holder. The fraud is by an Account Holder. There is nothing on record to show that the respondent aided and abeted the Account Holder in committing the alleged fraud. There is exoneration from the charge of bribery. In such circumstances, the Presiding Officer was right in both conclusions drawn by him. Mr.Vaidya pointed out there was no necessity in framing the issue of backwages at all. He submits that the management is unnecessaryily making issue of an act which has neither caused any loss nor serious prejudice to it.

These are matters of accomodating a Account Holder for a limited period. Subsequently and even on the date when the cheques were presented there was a credit balance in the Account of the Current Account Holder. The cheques were honoured by the bank. The decisions of such nature are not taken by the Respondent at the level at which he is working. In such circumstances, the punishment of dismissal is not only extreme but wholly disproportionate. Assuming there is some lapse it is minor in character and should not be visited with extreme penalty. Mr.Vaidya has relied upon a decision of Supreme Court reported in **(2005) 8 SCC page 351 in the case of M.M.Malhotra vs. Union of India and Ors.**

33. For properly appreciating the rival contentions, it would be necessary to note that facts as alleged in the charge-sheet are not disputed. It is nobody’s case that the Account holder was not introduced by the respondent, the pay-in-slips were not filled in by the first respondent or that the Fate letters were not written by him. All the three acts being admitted the conclusion that was drawn by

the Enquiry Officer is that as far as Charge No.1 is concerned, the charge is proved. However, the final order passed by the Tribunal authority exonerates the first respondent of this charge. As far as the second charge is concerned of filling in pay-in-slips, the Inquiry Officer after holding that the respondent has filled in the relevant pay-in slips in his own handwriting, holds that the charge as framed stands proved. Thus, on the material produced including the admission of the first respondent, the Enquiry Officer concluded that the Charge no.2 is proved and this finding and conclusion is upheld by the Disciplinary Authority. It is also upheld in Appeal.

35. Charge no.3 pertains to Fate letters.

35. I need not reiterate the practice of addressing such letters as was prevalent in the petitioner bank at the relevant time. That is an admitted fact. The practice as prevalent has been explained by the petitioner and the deposition of its witness has been referred by me precisely for these

reasons. The practice of Fate letters being forwarded by the petitioner for honouring certain cheques from the account of the Account holder/client must not be seen in isolation. In this case, it is admitted that the Current Account holder is a person introduced by the Respondent. The respondent no.1 all throughout was posted in the Savings department at the Bhuleshwar branch. His role does not end at the introduction of the Current Account holder M/s.Shreeji Jewellers but goes ahead in assisting Account holder in filling in pay-in-slips. The fact that the pay-in-slips were filled and subsequently two cheques from the Current Account Holder's Account being returned dishonoured was something known to the respondent no.1. Thus, at the relevant time, the Credit and Debit balance position of the Current Account was known to the Respondent No.1. The amounts therein were not sufficient to honour cheques of huge sums drawn on third parties by the Account Holder.

36. However, when the Current Account holder issued cheques to third party the petitioner found

itself bound to honour them because of execution of the Fate letters. That the Fate letters were in the handwriting of the respondent no.1 is not disputed. That on the strength of the Fate letters the bank honoured the cheques is also not disputed. The only argument is that the respondent no.1 did not do anything beyond writing these Fate letters. He has not executed and signed them. They are signed by Mr.Saujiani. Therefore, the Fate letters being written by the respondent no.1 cannot be said to be a misconduct. In any event, it is not prejudicial to the interest of the bank or likely to involve the bank in serious loss.

37. It is not possible for me to accept this contention. The Supreme court has time and again emphasized that a bank officer is required to exercise higher stands of honesty and integrity. He deals with the money of depositors and the customers. Every officer/employee of the bank is required to take all possible steps to protect the interests of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do

nothing which is unbecoming of a bank officer. Good conduct and discipline are inseparable from the functioning of an organization. The very discipline of an organization more particularly a bank is dependent upon each of its officer and officers acting and operating within their allotted sphere is something which is highlighted by the Supreme court. If any decision is to be noted and necessary to be referred to, then it would be sufficient to reproduce the observations of the Supreme court in the case of **Chairman and Managing Director, United Commercial Bank and Ors vs. P.C. Kakkar reported in 2003(1) CLR page 796.** The Supreme Court observes thus :-

> "A Bank Officer is requiread to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the bank is required to take all possible steps to protect the interests of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipline are inseperable from the functioning of every officer/employee of the bankl. The very discipline of an organization more particularly a bank is dependent upon each of its officers and officer acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casaul in nature and were serious. These aspects do not appear to have

been kept in view by the High Court."

38. This being the position, I am unable to accept the contentions of Mr.Vaidya. The bank has not suffered any loss and therefore mere writing of the Fate letters cannot be termed as gross misconduct, leave alone acting prejudicial to the interest of the bank, is his submission. That cannot be accepted either. In State Bank of India vs. T.J.Paul reported in A.I.R.1999 SC 1994 the Hon'ble Supreme Court has observed that likelihood of serious loss is sufficient to bring the case within "gross misconduct." In this behalf, the relevant Clause of the Bipartite Settlement needs to be noticed. That is doing any Act prejudicial to the interest of the Bank or negligence or gross negligence involving or likely to involve the Bank in serious loss. Inherent in Mr. Vaidya's submission is an admission that the Act is a negligence involving or likely to involve the Bank in serious loss. Even that is a gross misconduct for which one of the Punishment prescribed is "Dismissal without notice."

39. In the decision cited by Mr.Vaidya, (M.M.Malhotra) (supra) the Supreme Court has in the backdrop of a complaint made against the Officer observed that the term ‘misconduct’ would take within its scope range of activities which may amount to acts which are inconsistent with the interest of public and not befitting the status and dignity of a public servant. It would be impossible to enumerate the misconduct as the word ‘misconduct ’ is not capable of precise definition. After going through the observations of the Supreme Court in para 17 and 22 of this decision, it is not possible to give a narrow meaning to the said term as desired by Mr.Vaidya. It ultimately depends upon the conduct, Rules of the government and public sector corporations. Thus, it is not possible to agree with Mr.Vaidya that the Fate letters being executed and forwarded so also the assurance therein allegedly not resulting in any loss to the bank, there is no misconduct on the part of the respondent no.1.

40. In this behalf, what was before the Presiding Officer was the conclusion drawn by the Inquiry Officer which again was based upon the materials produced before him.

41. Charge No.3 is that the respondent no.1 acting in collusion with the two other officers, issued four fate letters favouring Current Account Holder. Initially an attempt was made to dispute the handwriting but ultimately the handwriting was admitted but the role of the respondent no.1 was termed as insignificant. It was pointed out that a typist cannot be held responsible for typing a letter which subsequently turns out to be bogus or the contents whereof are misused or not disclosing true state of affairs. This analogy was reiterated by Mr. Vaidya before me. This is not a case of a typist held to be responsible for typing a forged or bogus letter. Here respondent no.1 wrote the contents of the Fate letters in his own handwriting. Being a bank official he was aware of the consequences of the contents of the same. It is not a case of an employee who is recruited as a Typist or Computer

Operator or anybody whose services have been requisitioned for drafting or preparing a letter. The employee concerned has not stepped in merely as a draftsman or to assist somebody in preparation of these letters. As pointed out above, his Act cannot be seen in isolation. It cannot be seen dehors the role attributed to him. His involvement is right from the time of introduction of the parties. It is a case of an employee working in a nationalised bank going beyond the limits of the authority and assisting an Account holder in getting such favours. That the respondent no.1 can go ahead and get such a favour for a Current Account holder goes to show that he had great clout, influence and confidence in himself as well as his superiors. It is not as if he was the only person involved. His superiors are equally involved. Merely because no action is taken and pursued or dropped against them would not be of any assistance to the first respondent. The first respondent was very much responsible as a Bank Officer and ought to have been aware of the nature of his duties and the limits of his authority before going out of his way to assist the customer. The

Bank Officer as the Supreme Court has emphasized is dealing with public money and public funds. His actions ought to exhibit higher degree of integrity and character.

42. That apart, the finding of the Enquiry officer reiterated by the witness of the first petitioner bank would demonstrate that a loss did occur to the bank. In this behalf, it is worthwhile noticing that the cheques issued to Third parties and presented by their Collecting Bankers could not have been honoured but for the Fate Letters. Though, there are insufficient funds in the Account of the Constituent, Petitioner Bank made paymnent. Therefore, it did suffer a loss. It was seriously prejudiced even if the loss was temporary. In this behalf a useful reference can be made to the Statement of claim and the reply thereto. The respondent no.1 was aware of the charge against him. He was also aware of his role in preparation of these Fate Letters. It is in these circumstances that he canvassed a submission before the Learned Presiding Officer that he was not authorised to sign the Fate letters. His submission

was that he was not authorised to check the balance. It was the duty of Qureshi and Mr.Saujiani to sign the letter as an authorised person.

43. When the Tribunal held that the findings of the Enquriy Officer are perverse it ought to have been aware of the terminology and what the word ‘perverse’ means. A perverse finding or conclusion is something which is contrary to the materials on record. In legal parlance, it means brushing aside and ignoring the material evidence or against the weight of evidence. That is not a finding rendered in the Part-I Award. The Learned Presiding Officer has approached the manner in an altogether different manner. He seems to be under the impression that he can scrutinise the findings as if he is an appellate authority sitting in judgment over the conclusions drawn by Disciplinary and Appellate Authority of the Petitioner Bank. He has over simplified the matter by observing that the acts can be termed as a better customer service or help rendered to the colleagues. The misconduct and the active role of the respondent no.1 has been completely overlooked by the Presiding

Officer. In my view, his conclusion that the findings of the Enquiry Officer are perverse is not at all substantiated and indeed contrary to record, and could be termed as perverse.

44. The Enquiry Officer has referred to the materials produced before him including the deposition of witness examined by the petitioner and the version of the first respondent. He has in my view rightly concluded that the act of the respondent no.1 in writing the Fate letters despite not being authorised to do so is an act which can be safely be termed as 'misconduct' within the meaning of the bi-partite settlement. First Respondent was all throughout aware of the Account Holder's financial status. Yet, he assisted him alongwith other Officers in meeting the demand of a third party. While obliging the customer all officers conveniently overlooked the fact that they were dealing with public money and funds which are placed in Trust. If they are going out of the way and assisting their own clients they are also putting at risk the public funds. It is not as if the version of the first respondent is that he was completely ignorant of the

fact that as to why he was summoned by his superiors. This is not a case of an innocent employee whose assistance is sought by another colleague during the course of his duties. It is a case where the first respondent, leaving aside his duties and bank norms, acted beyond the scope of his authority. He was not a person working in the Current Account Department but with Savings Account branch. As to why he thought it fit to write a letter for another department is clear in as much as a party for whom the letter was prepared and addressed to the Collecting bank was all throughout known to the first respondent. In this behalf the findings of the Enquiry Officer are the following :-

> "3. Depositions of MW-5 clearly brings out that the Fate letters are written by the CSE and that there was not sufficient balance in the said C.D. to honour the cheques said to have been honoured though Fate Letters written by the CSE, though signed by another official of the Bank states otherwise. All these cheques stated to be honoured were honoured by the Bank after treating debit balance, which resulted in a loss to the Bank.
>
> . Further MW-4 has deposed in the cross-examination that CSE was depositing nearly 50% of the total cash deposits made by the party which indicates Shri Vanmali was actively involved in the so called "customer service" to a client, which ultimately

resulted in a disservice to the Bank.

. The fake Fate Letters which emanated from the branch was written by the CSE signed by another official in loss of amount of Rs.36.93 lacs.

. The charge No.3 also stands proved to the extent of writing fake letters by the CSE, and the CSE with other misled the collecting banks, thereby unduly favour the C.D. Account Holder M/s.Shreeji Jewellers.

. Thus the CSE aided and abetted in committing a fraud of Rs.36.93 lacs on the Bank by the party.

. However, it may be noted that charge of receiving illegal gratification of RS.1,000/- by the CSE was not proved.

45. In my view the Learned Presiding Officer has clearly brushed aside these materials and infact acted beyond the scope of his powers conferred by Section 11A of the Industrial Disputes Act. In this context, it would be appropriate to notice its interpretation in the latest decision of the Supreme Court in the case of **Damoh Panna Sagar Rural Regional Bank vs. Munna Lal Jain reported in AIR 2005 SC page 584.** This is what is observed by the Supreme Court :-

"14. The common thread running through in all these decisions is that the Court should

not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury's case (supra) the Court would not go into the correctness of the choice made by the administrator open to him and made. The Court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision making process and not the decision.

15. To put differently unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court/Tribunal, there is no scope for interference. Further to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the Disciplinary Authority to reconsider the penalty imposed.

17. A Bank Officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the Bank is required to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank officer. Good conduct and discipline are inseperable from the functioning of every officer/employee of the Bank. As was observed by this court in Disciplinary Authority-cum-Regional Manager vs. Nikunja Bihari Patnaik (1996(9) SCC 69), it is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority.

The very discipline of an organization more particularly a Bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. These aspects do not appear to have been kept in view by the High Court.

18. It needs no emphasis that when a court feels that the punishment is shockingly disproportionate, it must record reasons for coming to such a conclusion. Mere expression that the punishment is shockingly disproportionate would not meet the requirement of law. Even in respect of administrative orders Lord Denning M.R. in Breen v. Amalgamated Engineering Union (1971(1) ALL ER 1148) observed: "The giving of reasons is one of the fundamentals of good administration". In Alexander Machinery (Dudley) Ltd vs. Crabtree (1974) LCR 120) it was observed: "Failure to give reasons amounts to denial of justice". Reasons are live links between the mind of the decision taken to the controversy in question and the decision or conclusion arrived at". Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The 'inscrutable face of a sphinx' or is ordinarily incongruous with a judicial or quasi judicial performance."

46. Thus, the exercise undertaken by the Presiding Officer of calling upon the management to lead evidence to justify its action is something which is uncalled for in the facts and circumstances of this case. Assuming that it was necessary for the management to lead evidence to prove the charges, its officer's deposition on Affidavit is totally unshaken and uncontroverted. The Inquiry Officer's report was already on record. In such circumstances, the management has got over the earlier obstacle and demonstrated that the findings are not perverse at all. Once the findings were not perverse then what remains for consideration is the quantum of punishment. The matter of punishment is also something which the Tribunal has dealt with contrary to the settled principles. The Part II Award demonstrates that the Tribunal has again reopened the entire matter which was impermissible at that stage. If it was considering the action of the management in dismissing the respondent no.1 and scrutinising the same, then, it was not necessary to go into the findings in details all over again. That it was aware that it could not have done so is clear from

the reading of Part II Award. However, while deciding the matter at the stage of Part II, it has gone back and referred to the depositions of parties. Even when it refers to the same, it is aware that the punishment can only be interfered with if it shocks Judicial Conscience or is wholly disproportionate to the guilt. The Presiding Officer's conclusions show that the punishment is adequate and sufficient.

47. In the entire Part II Award when the Tribunal interferes with the punishment, nowhere, it is observed that the punishment as awarded is shockingly disproportionate or that the same could not have been awarded considering the role of the employee in the same. In my view, the tribunal has committed a gross error apparent on the face of the record. The Awards rendered it are beyond Authority conferred upon it by law. The same ignores the relevant principles laid down while deciding such references. Its conclusions therefore are not only erroneous but wholly illegal and this court would be failing in its duty if it does not step in in its jurisdiction under Article 226 of the Constitution of India. There is much

substance in the criticism of Ms.Kher that the Tribunal has over reached and exceeded its jurisdiction while rendering the impugned awards.

48. For the reasons set out above, it is not possible to uphold the Awards delivered by the Tribunal. It is not necessary to refer to all the decisions brought to my notice since the principles have been summarised in the latest decision.

49. In the result, the Writ Petition succeeds. Rule is made absolute in terms of prayers (a) and (b) with no order as to costs.

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